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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CAROL CROVISIER et al., Plaintiffs and Appellants, v. SCPIE HOLDINGS, INC. et al., Defendants and Respondents.	B152613 (Los Angeles County Super. Ct. No. BC223273)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, Alexander H. Williams III, Judge. Affirmed.

Ivie, McNeill & Wyatt, Rupert A. Byrdsong and James A. Busalacchi, Jr. for Plaintiffs and Appellants.

Horvitz & Levy, Ellis J. Horvitz, S. Thomas Todd; Latham & Watkins, Andrew M. Paley and Philip M. Midgen for Defendants and Respondents.

Carol Crovisier sued her former employer, SCPIE Holdings, Inc., and two of its officers, Donald Zuk and Tim Trovato (collectively SCPIE), for damages arising from alleged sexual harassment and related claims. Her husband, Baird Crovisier, also sued SCPIE for loss of consortium. The trial court granted summary judgment in favor of

SCPIE on two grounds: (1) Carol Crovisier[1] signed a release of all claims when she left SCPIE's employ; and (2) all the Crovisiers' claims were barred by the statute of limitations. Because we affirm the judgment based on the statute of limitations, we need not reach the parties' arguments regarding the validity of the release.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Crovisier began working for SCPIE in 1985. She rose through the ranks and was eventually promoted to vice-president/manager of policyholder services. In that position, Crovisier reported directly to SCPIE's president and chief operating officer Donald Zuk. Zuk was an active manager, who was well-known in the company for yelling at employees and using derogatory terms for female employees. He was also known to touch female employees and make inappropriate remarks.

At a business conference in 1992, Zuk sexually assaulted Crovisier in her hotel room. He also touched her on her breasts and buttocks on several occasions and ordered her to perform personal errands for him in addition to her business duties. In December 1998 he demoted and berated Crovisier for failing to attend a company Christmas party. Crovisier resigned her position with SCPIE in January 1999. She executed a waiver and release of all claims against SCPIE in exchange for a severance package worth approximately $113,000.

Crovisier filed a complaint with the Department of Fair Employment and Housing (DFEH) on December 29, 1999, alleging harassment and assault. She received an immediate "right to sue" letter on December 30, 1999. She filed a complaint against SCPIE, Zuk and Trovato on January 18, 2000. The complaint alleged violations of the Fair Employment and Housing Act, Government Code section 12900 et seq. (FEHA),

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1 Carol Crovisier is referred to hereafter as "Crovisier."

2 Out of respect for Crovisier's privacy, we include only those facts necessary for our analysis and disposition of the case.

sexual discrimination, sexual assault and battery, intentional infliction of emotional distress and a claim for loss of consortium by Baird Crovisier.[3]

SCPIE moved for summary judgment against Crovisier, arguing her claims were barred by the statute of limitations and by the release agreement. Crovisier opposed the motion, asserting there were issues of fact as to the validity of the release. She also argued the statute of limitations was tolled by the "continuing violations" doctrine. The trial court granted SCPIE's motion, finding there was a valid release, Crovisier had breached the separation agreement and the statute of limitations barred her claims.

SCPIE thereafter filed a motion for summary judgment against Baird Crovisier, arguing the statute of limitations also barred his claim for loss of consortium. The trial court granted that motion.

After a trial on the issue of damages for Crovisier's breach of contract, the parties stipulated to entry of judgment; and judgment was entered in favor of SCPIE. The Crovisiers filed a timely notice of appeal.

CONTENTIONS

Crovisier contends the trial court should have applied the "continuing violations" doctrine to extend the statute of limitations until the day she resigned.

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[3] SCPIE filed a cross-complaint against Crovisier for breach of contract, alleging her lawsuit violated the release provision of her separation agreement. SCPIE Management Company (SMC), SCPIE's parent company, filed a complaint against Crovisier for breach of contract and fraudulent inducement. The two actions were consolidated. The trial court granted summary adjudication against Crovisier on the liability issues in the consolidated actions.

DISCUSSION

1. *Standard of Review*

The standard of review on appeal after an order granting summary judgment is well settled. "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. (*Artiglio v. Corning Inc*. (1998) 18 Cal.4th 604, 612.) In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .' (Code Civ. Proc., § 437c, subd. (*o*)(2); see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)" (*Merrill v. Navegar*, *Inc.* (2001) 26 Cal.4th 465, 476-477.)

In reviewing the evidence, we strictly construe the moving party's evidence and liberally construe the opposing party's and accept as undisputed only those portions of the moving party's evidence that are uncontradicted. "Only when the inferences are indisputable may the court decide the issues as a matter of law. If the evidence is in conflict, the factual issues must be resolved by trial. 'Any doubts about the propriety of summary judgment . . . are generally resolved *against* granting the motion, because that allows the future development of the case and avoids errors.' [Citation.]" (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839.)

2. *The Trial Court Properly Granted Summary Judgment Based on the Expiration of the Statute of Limitations*

Pursuant to Government Code section 12960, Crovisier was required to file an administrative claim with the DFEH within one year of the alleged unlawful act.

Crovisier filed her DFEH complaint on December 29, 1999. The complaint alleged that Zuk had touched her inappropriately and had ordered her to perform personal tasks for him as part of a campaign of harassment. It also alleged that the SCPIE Board of Directors was aware of the harassment and had failed to act. However, it is undisputed that the last time Zuk touched Crovisier inappropriately was in October 1998, the last personal errand Zuk asked her to perform was before Christmas 1998 and the complaint to the Board of Directors (by someone other than Crovisier) occurred in March 1998.

Crovisier contends her claim is timely notwithstanding these undisputed facts because SCPIE's conduct falls within the continuing violation doctrine, an equitable exception to the one-year limitations period. "Under [the continuing violation] doctrine, a complaint arising under FEHA is timely if *any* of the discriminatory practices continues into the limitations period. [Citations.]" (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 349.) "That doctrine . . . allows liability for unlawful employer conduct occurring outside the statute of limitations if it is sufficiently connected to unlawful conduct within the limitations period." (*Richards v. CH2M Hill*, *Inc.* (2001) 26 Cal.4th 798, 802 (*Richards*).)

It is undisputed that the specific unlawful acts alleged in Crovisier's DFEH complaint -- the touching and personal errands -- occurred more than one year before the complaint was filed. There is no evidence that any similar incidents occurred after that time. Because the continuing violation doctrine requires "unlawful conduct *within* the limitations period" (*Richards, supra*, 26 Cal.4th at p. 802, italics added), it does not apply to save Crovisier's claims from the bar of the statute of limitations.

Although all the specific acts of misconduct occurred more than one year prior to the filing of her complaint, Crovisier nonetheless insists, relying on language from *Richards, supra*, 26 Cal.4th 798, that the statute of limitations did not begin to run until she resigned from SCPIE because the hostile work environment created by Zuk continued until she left the company. In *Richards* the Supreme Court held the continuing violations doctrine permitted a discrimination claim directed to an employer's persistent failure to

eliminate a hostile work environment if the employer's unlawful actions "are (1) sufficiently similar in kind -- recognizing, as this case illustrates, that similar kinds of unlawful employer conduct . . . may take a number of different forms [citation]; (2) have occurred with reasonable frequency; (3) and have not acquired a degree of permanence. [Citation.]" (*Id*. at p. 823.) But the Court cautioned that "'permanence'" in the context of ongoing harassment is properly understood to mean "that an employer's statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile." (*Ibid*.)

Crovisier admits that she had "developed a sense of hopelessness" and felt the harassment had become permanent some time before she resigned her position. However, she contends that this was insufficient to start the statute of limitations because it is the "employer's statements and actions," rather than the employee's state of mind, that determines whether the harassment has become permanent. Thus, she argues the clock did not start until she resigned. We reject Crovisier's contention because her declaration testimony sets out in detail the acts and omissions by SCPIE and its agents that put her "on notice that further efforts to end the unlawful conduct will be in vain." (*Richards*, *supra*, 26 Cal.4th at p. 823.)

In March 1998 SCPIE Vice-President George Schroeder complained to the Board of Directors about inappropriate conduct by Zuk and mentioned Crovisier's name as a witness to such conduct. Although Crovisier hoped Schroeder's complaint would spur the Board to take action against Zuk, such was not the case. According to Crovisier's declaration "Zuk ordered me to listen to the George Schroeder complaint. It was like 'Look, nothing will happen even if you complain.'" The Board took no action and Crovisier concluded, "In light of the Board's response to Mr. Schroeder's complaint, even complaining to the Board would have been a futile gesture."

Crovisier's declaration also states, "Defendant Zuk felt he could harass me with impunity. In October 1998 he grabbed my butt in the presence of a Board Member and

encouraged defendant Tim Tr[o]vato to fondle me as well. This incident was witnessed by Willis King, a Board member. If defendant Zuk was comfortable to grope me in front of other employees and Board members, it was apparent that he had the full support of the Board regardless of his conduct. I had absolutely no where [*sic*] to turn to challenge defendant Zuk. The Board was not going to hold him accountable for his behavior. My only recourse and chance to realize justice is this litigation."

Crovisier's declaration establishes that by March 1998, and certainly no later than October 1998, she knew, based on the conduct of Zuk and the inaction of the Board of Directors after it had been informed of the problem, that no remedial action would be forthcoming. Accordingly, the continuing violation doctrine no longer applied. (*Richards, supra,* 26 Cal.4th at p. 823 [where it is clear that employer will not take action to end the harassment, "justification for delay in taking formal legal action no longer exists"].)

The trial court found Crovisier's non-FEHA claims were time barred because she filed her complaint more than one year after her last day of work at SCPIE. Crovisier concedes that this ruling may be reversed only if we rule in her favor on her FEHA claim. Baird Crovisier also concedes that, if Carol Crovisier's claims are barred by the statute of limitations, his claim for loss of consortium is also barred. Accordingly, the judgment of the trial court must be affirmed in its entirety.

DISPOSITION

The judgment of the trial court is affirmed. Respondents are to recover their costs on appeal.

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PERLUSS, P. J.

We concur:

JOHNSON, J.

WOODS, J.